

HOUSE BILL 494  
By DuBois

AN ACT to amend Tennessee Code Annotated, Title 36,  
Chapter 3, Part 6, relative to orders of protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-3-605, is amended by deleting subsections (b) and (c) and substituting instead the following:

(b) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be personally served upon the respondent as provided by law at least five (5) days prior to such hearing. Such notice shall advise the respondent that the respondent may be represented by counsel. Within fifteen (15) days of service of such order on the respondent under this section, a hearing shall be held, at which time the court shall either dissolve any ex parte order which has been issued, or shall, if the petitioner has proved the allegation of domestic abuse by a preponderance of the evidence, extend the order of protection for an indefinite period of time, subject to the provisions of subsection (c). Any ex parte order of protection shall be in effect until the time of the hearing and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse by a preponderance of the evidence, the court may, at that time, issue an order of protection for an indefinite period of time, subject to the provisions of subsection (c).

(c)

(1) After an order of protection issued pursuant to subsection (b) has been in effect for one (1) year, the respondent may petition the issuing court to have such order dissolved. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition to be personally served upon the holder of the petition as provided by law at least fifteen (15) days prior to such hearing. The order of protection shall remain in effect until the hearing and until dissolved by the court.

(2) At the hearing the respondent shall have the burden of proving by a preponderance of the evidence that there has been a material change in circumstances such that the reasons why the order of protection was originally issued no longer apply and are unlikely to reoccur. The court may hear whatever proof on this issue it deems appropriate and necessary.

(3) If the court finds that the respondent has met the burden set out in subsection (b), it may either dissolve or modify the order of protection. If the respondent does not meet such burden of proof, it shall deny the petition, the order shall stay in effect and the respondent may not petition to dissolve the order again until two (2) years have elapsed from the date of denial, and then every two (2) years after any subsequent denials.

(4) In calculating the periods of time after which a respondent may petition to dissolve an order of protection, if the respondent is at any time found by a court of competent jurisdiction to be in violation of the order, the one (1) and two (2) year time periods set out in this subsection shall recommence from the date of the violation.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.